

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION**

**PRACTICE AND PROCEDURE ORDER UPON TRANSFER  
PURSUANT TO 28 U.S.C. §1407(a)**

**IT IS HEREBY ORDERED THAT:**

This order shall govern the practice and procedure in those actions transferred to this Court by the Judicial Panel on Multidistrict Litigation pursuant to its order of August 13, 2012, as well as all related actions originally filed in this Court or transferred or removed to this Court. This order shall also govern the practice and procedure in any tag-along actions transferred to this Court by the Judicial Panel on Multidistrict Litigation pursuant to Rule 12 of the Rules of Procedure of that Panel subsequent to the filing of the final transfer order by the Clerk of this Court and any related actions subsequently filed in this Court or otherwise transferred or removed to this Court.

**1. Pretrial Consolidation.** The cases described in the introductory paragraph of this order, and identified within the Clerk's Notice, are consolidated for pretrial purposes. This order does not constitute a determination that these actions should be consolidated for trial, nor does it have the effect of making any entity a party to an action in which it has not been joined and served in accordance with the applicable rules.

**a. Filings.** Any pleading that is to be filed in any of these actions shall be filed with the Clerk of this Court and not with the transferor district court. All pleadings should be filed electronically via this Court's CM/ECF system, in accordance with the local rules. All pleadings shall be e-filed ONLY in the Master MDL Docket No.: 3:12MD2384. The pleadings' caption shall reference the Master MDL Docket No, along with all applicable member docket numbers or a reference to "All Member Cases."

**b. Master Docket and File.** All papers filed in these actions shall bear the identification "MDL Docket No.: 3:12MD2384" along with the member docket number for that case

**c. Individual Member Case Filings.** The Clerk of Court shall also open a separate civil action number for each member case filed in or transferred to this Court.

**d. Joint Submissions.** Any pleading filed in any of these actions which is substantially identical to any other pleading filed in another of these actions shall be sufficient if it incorporates by reference the pleading to which it is substantially identical. Where counsel for more than one party plan to file substantially identical pleadings they shall join in the

submission of such pleadings and shall file one pleading on behalf of all so joined.

**e. Attorney Appearances.** Counsel who appeared in the transferor district court prior to the transfer need not enter a separate appearance before this Court. Upon receiving notification of the transfer, counsel will have two (2) weeks within which to register for ECF in order to receive notices of electronic filing through the Court's ECF system. Counsel may electronically register for ECF on the Court's website at [www.ncwd.uscourts.gov](http://www.ncwd.uscourts.gov). If counsel fails to register, the clerk's office will remove their name from the Master MDL Docket.

**f. Association of Local Counsel.** No parties to any of these actions shall be required to obtain local counsel in this district and the requirements of the Local Rules for the Western District of North Carolina are waived as to any attorney appearing in these actions who is duly admitted to practice before any United States Court.

**g. Service Prior To Pretrial Conference.** Prior to the first pretrial conference, service of all pleadings shall be made on each of the attorneys listed on the Master MDL Docket No.: 3:12MD2384. Service shall be deemed sufficient if made upon all attorneys on the Master MDL Docket. See Subsection 3c below for service after appointment of liaison counsel.

**h. Hearings.** Hearings shall not be held on any motions filed except by order of Court upon such notice as the Court may direct.

**I. Orders.** Any orders including protective orders previously entered by this Court or any transferor district court shall remain in full force and effect unless modified by this Court upon application.

**j. Discovery.** With the exception of compliance with FED. R. CIV. P. 26(f), all discovery proceedings in these actions are stayed until further order of this Court and the time requirements to perform any acts or file any papers pursuant to Rules 26 through 37, Federal Rules of Civil Procedure, are tolled until the first pretrial conference at which time a discovery schedule will be established.

**k. Contact Information.** Counsel's primary contacts in the Clerk's Office will be Tammy Gryder, Deputy Clerk, and Betsy Wallace, Operations Manager. The phone number for the Clerk's Office is (704)350-7400 and Ms. Gryder can be reached at (704) 350-7409 or via email at [Tammy\\_Gryder@ncwd.uscourts.gov](mailto:Tammy_Gryder@ncwd.uscourts.gov). Primary contacts for counsel within Judge Mullen's chambers will be Suzanne Barber, Administrative Assistant, and Jennifer Braccia or Debbie Coble, Judicial Law Clerks. The phone number to Judge Mullen's chambers is (704) 350-7450 and Ms. Braccia can be reached at (704) 350-7454 or [Jennifer\\_Braccia@ncwd.uscourts.gov](mailto:Jennifer_Braccia@ncwd.uscourts.gov). Ms. Coble can be reached at (704) 350-7453 or [Debbie\\_Coble@ncwd.uscourts.gov](mailto:Debbie_Coble@ncwd.uscourts.gov).

**l. Referrals to Magistrate Judge / Special Masters.** To the extent possible, this Court will conduct all of the pretrial proceedings. If appropriate, the Court may consider referral of certain issues to a magistrate judge or special master.

**2. Organization of Plaintiff's Counsel.** On or before September 21, 2012, counsel shall submit briefs to the Court regarding the desirability of appointing liaison counsel. When submitting their briefs, counsel is advised that since the Court is using the CM/ECF system, all attorneys registered on the case will receive notices of filings in any case related to this action.

**3. Pretrial Conference.** All other matters will be discussed at the initial pretrial conference to be held on Thursday, October 18, 2012 at 2 p.m. in Courtroom #3. On or before September 21, 2012, counsel shall furnish suggestions for items to be included on the agenda for this conference. Suggestions may be submitted informally to the Court.

**a. Initial Attorney's Conference ("IAC") & Certification.** Counsel are referred to Rule 26(f) of the Federal Rules of Civil Procedure, as well as Local Rule 16.1(A). (An IAC form may be found on the district's website.) The IAC Certification Form shall be submitted no later than September 21, 2012.

**b. Agenda.** The parties shall be prepared to discuss the subjects identified within Rule 16(c) of the Federal Rules of Civil Procedure.

**c. Appointment Of Liaison Counsel.** Following the Pretrial Conference, and contemporaneously with issuance of the Pretrial Case Management & Schedule Order, the Court may appoint liaison counsel.

**d. Factual Statements & Disputed Issues.** The Court requests that the parties submit, jointly if possible, a brief factual statement of their respective positions including background, setting, likely dimensions of the litigation, and identification of disputed issues no later than September 21, 2012. Information contained within this summary will not be treated as an admission or be otherwise binding upon the parties.

**e. Attorney Service List.** The parties shall present to the Court at the first pretrial conference an updated list of attorneys for purposes of service. (As for service prior to the pretrial conference, see subsection 1(g)). Only one attorney for each party separately represented shall be included on such list.

**4. Local Rules.** A copy of the Local Rules for the Western District of North Carolina is available on the district's website, "<http://www.ncwd.uscourts.gov/>" The Court's website provides a wealth of information pertaining to practice in the Western District.

**5. Manual For Complex Litigation As A Suggested Resource.** In addition to the Judicial Panel on Multidistrict Litigation's Rules, the Court will be guided by the Manual for Complex Litigation, Third Edition, approved by the Judicial Conference of the United States and counsel are directed to familiarize themselves with that publication. This manual is published by the Federal Judicial Center, "<http://www.fjc.gov/>"

**6. Tag-Along Actions.** Upon entry of a Transfer Order by the Judicial Panel on Multidistrict Litigation identifying additional cases to be transferred to this district for consolidated pretrial proceedings, the Clerk of Court is directed to forward a copy of this Practice and Procedure Order to counsel of record in those cases as well. In the event of transfer, which is effective only after a final transfer order is filed in this district, counsel in these cases should be prepared to participate in the IAC process and Pretrial Conference.

**IT IS SO ORDERED.**

**THE CLERK OF COURT IS DIRECTED TO SEND A COPY  
OF THIS ORDER TO:**

1. ALL COUNSEL IDENTIFIED ON THE MASTER MDL DOCKET NO: 3:12MD2384;
2. THE CLERK OF THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION; and
3. COUNSEL OF RECORD FOR IDENTIFIED POTENTIAL TAG-ALONG ACTIONS.

Signed: August 21, 2012



Graham C. Mullen  
United States District Judge

